

1998

(REV. 1997)

STATE OF HAWAII—DEPARTMENT OF TAXATION

**INSTRUCTIONS FOR FORM U-6
PUBLIC SERVICE COMPANY TAX RETURN**

(Public Service Company Tax Law, Chapter 239, HRS)

CAUTION: *THIS RETURN IS TO BE BASED ON OPERATIONS FOR THE PRECEDING TAXABLE YEAR IN 1997, HOWEVER, SEE BELOW "Special Rules" FOR TAXPAYERS REPORTING THEIR FIRST YEAR OR SECOND YEAR OF DOING BUSINESS.*

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Changes You Should Note. —

Pursuant to Act 91, Session Laws of Hawaii 1995, and effective June 7, 1995, public service companies no longer can claim the Enterprise Zone Tax Credit.

The exemption from the imposition of the Public Service Company Tax of the gross income of any contract carrier by water which is engaged primarily in the business of transporting persons between harbors or wharves of the various counties for interisland cruises within the State, which was applicable for the period of July 1, 1981 to June 30, 1996, is no longer available.

Nature of the tax. — The public service company tax is in the nature of a property tax measured by gross income. It is a means of taxing the real property (owned by the public utility or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and the personal property of a public utility, tangible and intangible, including going concern value, and the personal property of a common carrier by water, motor carrier and contract carrier other than a motor carrier, tangible and intangible, including going concern value.

It should be noted that public utility companies as defined below are liable for both the public service company tax and the public utility fee. The public service company tax is administered by the Department of Taxation and the public utility fee is administered by the Public Utilities Commission (PUC). Accordingly, the public utility fee shall be paid to the PUC in the form and manner prescribed by the PUC.

Definition of certain terms used in Chapter 239, HRS.—

"Carrier" means a person who engages in transportation, and does not include a person such as a freight forwarder who provides transportation by contracting with others, except to the extent that such person oneself engages in transportation.

"Contract carrier" means a person other than a public utility or taxicab which, under contracts or agreements, engages in the transportation of persons or property for compensation, by land or water.

"Gross income" means the gross income from public service company business as follows:

- (1) Gross income from the production, conveyance, transmission, delivery or furnishing of light, power, heat, cold, water, gas or oil;
- (2) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water:
 - (a) Originating and terminating within this State;
 - (b) By means of vessels having their home port in the State and operating between ports in the State, with respect to the transportation so effected; or
 - (c) By means of plant or equipment located in the State, between points in the State; or
- (3) Gross income from the transportation of freight by motor carriers (other than as stated in (2) above), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in (2) above.) (See **Who must file Form U-6**, for other lines of business not subject to public service company tax.)

The words "gross income" and "gross income from public service company business" shall not be construed to include dividends (as defined by Chapter 235, HRS) paid by one member of an affiliated public service company group to another member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance or managerial services by one member of an affiliated public service company group to another member of the same group. "Affiliated public service company group" means an affiliated group of domestic corporations within the meaning of Chapter 235, HRS, all of the members of which are public service companies. "Member of an affiliated public service company group" means a corporation (including the parent corporation) which is included within an affiliated public service company group.

"Home port" means the place where vessels have their tax situs or principal tax situs.

"Motor carrier" means a common carrier or contract carrier transporting freight or other property on the public highways, other than a public utility or taxicab.

"Net operating income" of a public utility subject to the tax imposed by section 239-5(a), HRS, is the operating revenues less the operating expenses and tax accruals, including in the computation of such revenues and expenses, debits and credits arising from equipment rents and joint facility rents. In the event that, but for this sentence, deductions could not be had for expenses of services because such services were rendered by the same person or persons constituting the public utility or could not be had for income taxes, because such taxes were levied against the person or persons constituting the public utility in the person's or their individual capacity and not as a separate entity, there nevertheless shall be allowed as deduction in computing the net income.

- (1) a reasonable allowance for the value of personal services actually rendered, and
- (2) such proportion of the actual amount of income taxes, federal and state, as fairly represents the portion of the income so taxed which was derived from the public utility business.

"Partner" means the same as in the Internal Revenue Code.

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"Ports" or "points in the State" shall be deemed to be such if they are loading, unloading, transshipment, assembly, transfer or relay points.

"Public highways" has the meaning defined by section 264-1, HRS, including both state and county highways, but operation upon rails shall not be deemed transportation on public highways.

"Public service company" means a public utility, motor carrier, or contract carrier.

"Public utility" has the meaning given that term in section 269-1, HRS.

Time and application of tax.—

General rule. The public service company tax applies to every public service company.

- (1) which is in business at the commencement of a calendar year, as of January 1 of that year;
- (2) which begins business after the commencement of a calendar year, as of the commencement of business.

Special rules.

- (1) Company in business on January 1, but not in business during the preceding calendar year (first year of doing business):

- (i) subsection (c) of section 239-9, HRS, applies. Under paragraph (2) of subsection (c) the tax is at the rate provided by section 239-5 and 239-6, HRS, except that the formula (ratio of the net income to the gross income being in excess of 15%) applicable to utilities subject to section 239-5(a), HRS, does not apply.
 - (ii) under subsection (c) the gross income for the calendar year is estimated and under subsection (e) it is adjusted by the Director of Taxation after the close of the year to actual gross income of the company for that year.
- (2) Company not in business on January 1, but business is commenced during the calendar year (first year of doing business):
- (i) subsection (c) of section 239-9, HRS, applies. However, under paragraph (1) of subsection (c) the tax is at the rate of 4%.
 - (ii) under subsection (c) the tax is paid on the basis of an estimate and under subsection (e) it is adjusted by the Director of Taxation after the close of the year to the actual gross income of the company for that year.
- (3) Company in business on January 1 and also in business during part or all of the preceding year, but not prior thereto (second year of doing business):
- (i) subsection (d) of section 239-9, HRS, applies. The tax is at the rates provided by section 239-5 and 239-6, HRS, except that the formula (ratio of net income to the gross income being in excess of 15%) applicable to utilities subject to section 239-5(a), HRS, does not apply.
 - (ii) the tax is paid on the basis of an estimate and under subsection (e) of section 239-9, HRS, is adjusted by the Director of Taxation after the end of the second year of doing business so as to be measured by twelve times the average monthly gross income during the period from the commencement of business to the end of the tax year involved.
- (4) Company in business on January 1 and also in business during the preceding calendar year and prior thereto (third year of doing business):
- (i) subsection (b) of section 239-9, HRS, applies.
 - (ii) the tax return showing the gross income for the preceding calendar year shall be filed and paid on or before April 20. (However, when the due date falls on a Saturday, Sunday, or legal holiday, the remittance or tax return shall not be due until the next succeeding day which is **not** a Saturday, Sunday, or legal holiday.)

Allocation and apportionment.— In the event a public service company is engaged in interstate or foreign commerce and an apportionment of gross income is necessary, section 239-8, HRS, provides for an apportionment on the basis of total direct cost of the transportation, conveyance, or transmission within the State. "Direct cost" is interpreted to mean and include payroll or labor hired for the handling and transportation of property or persons from the point of origin to the point of destination, payroll taxes attributable to such payrolls, materials used or consumed by the taxpayer in the handling and transportation of property or persons from the point of origin to the point of destination, that portion of any rent on leased equipment which is attributable to the use of such leased equipment in the handling and transportation of property or persons from the point of origin to the point of destination, that portion of depreciation on equipment owned by the taxpayer which is attributable to the use of such equipment in the handling and transportation of property or persons from the point of origin to the point of destination, that portion of the maintenance and upkeep of equipment which is attributable to the use of such equipment in the handling and transportation of property or persons from the point of origin to the point of destination, overload and ocean freight, and insurance.

Acquisition of business of another company.— Subsection (f) of section 239-9, HRS, relates to the acquisition by one public service company of the business of another and provides for treating the gross income of the company so acquired the same as if it were gross income of the acquired company, that is, the gross income to be reported by the acquiring company for the purpose of determining the amount of its tax for the year following the year in which such business was so acquired shall include, in addition to the gross income of the acquiring company during the year ending December 31 preceding, the gross income of the business or part thereof so acquired for such portion of such preceding year.

Consolidation or merger.— Subsection (g) of section 239-9, HRS, relates to the consolidation or merger of public service companies and provides that the liability to the tax shall attach to the company thus formed and the company thus formed shall include in its gross income, the gross income of the companies involved in the consolidation or merger.

Who must file Form U-6.— Each public service company shall file Form U-6, showing its taxable gross income for the preceding calendar year. In case any public service company carries on lines of business other than its public service company business, the receipts therefrom shall not be subject to public service company tax, but the same tax liabilities shall attach to such public service company on account of such other lines of business as would exist if no public service company business were done.

When Form U-6 must be filed.— Generally, the public service company tax applies to every public service company which is in business at the start of a calendar year (i.e., as of January 1 of that year), or any other date other than January 1 which represents the start of business. The return must be filed and the tax paid on or before the 20th day of the 4th month following the close of the taxable year to the tax collector for the district within which the principal office of the public service company is maintained.

Payment of tax.— In general, the tax must be paid on or before the twentieth day of the fourth month following the close of the taxable year. The public service company may elect to pay the tax in four equal installments, in which case the first installment shall be paid on or before the twentieth day of the fourth month following the close of the taxable year, the second installment shall be paid on or before the twentieth day of the sixth month following the close of the taxable year, the third installment shall be paid on or before the twentieth day of the ninth month following the close of the taxable year, and the fourth installment shall be paid on or before the twentieth day of the twelfth month following the close of the taxable year. If the public service company commenced business after the commencement of the calendar year 1998, the tax shall be payable on or before the twentieth day of the third month after the month in which the company commenced business. (See **Time and application of tax — Special rules. (2).**)

Notwithstanding the preceding, if the total tax liability under this chapter for the taxable year exceeds \$100,000, the taxes so levied shall be payable in twelve equal installments, in which case the first installment shall be paid on or before the tenth day of the first month following the close of the taxable year, and the remaining installments shall be paid on or before the tenth day of each calendar month after such date. If any installment is not paid on or before the date fixed for its payment, the Department of Taxation, at its election may cause the balance of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the Department.

Payment with extension.— Enter the amount paid with the Application for Automatic Extension of Time to File Public Service Company Tax Return (Form N-755). Attach a copy of Form N-755 to your tax return.

Tax installment payments.— Enter the total amount of public service company tax installments paid. Installment payments of the public service company tax are reported and paid on Form FP-1.

Note: If any date shown falls on a Saturday, Sunday, or legal holiday, substitute the next regular workday.

Where to File the Return or Call for Tax Information:

If the principal office of the organization is located in the	Send the return to or call the following Hawaii Taxation District Office
City and County of Honolulu	Oahu District Office P. O. Box 3559 Honolulu, Hawaii 96811-3559
Counties of Maui and Kalawao	Telephone: (808) 587-4242 Toll-Free: 1-800-222-3229 Maui District Office P. O. Box 913 Wailuku, Hawaii 96793-0913
County of Hawaii	Telephone: (808) 984-8500 Hawaii District Office P. O. Box 1377 Hilo, Hawaii 96721-1377 Telephone: (808) 974-6321

Rate of tax for public utilities.—

Part I: In the case of a public utility generally taxed under section 239-5(a), HRS, the rate of tax upon the gross income each year from its public utility business shall be determined as follows: If the ratio of net income of the company to its gross income is 15% or less, the rate of tax is 5.885%. For every 1% increase in the ratio over 15%, there shall be a corresponding increase of .2675% in the rate of tax. See section 239-9(c) and (d), HRS, for exceptions to the above rate formula if a public utility is in its first or second year of operation. (If the gross income is apportioned under section 239-8(b) or (c), HRS, the rate of tax shall be 5.885%.)

Public utilities taxed under section 239-5(a), HRS, shall use Form U-6, page 2, Part I to compute the tax due. However, it will be necessary to first complete the items of gross income and deductions on page 1 before using Part I.

Part II: In the case of a public utility taxed under section 239-5(b), HRS, (relating to carriers of passengers by land which consists in passenger fares on scheduled routes), the rate of tax shall be 5.35%. However, if such carrier has other public utility gross income, the passenger fares nevertheless shall be included in determining the rate of tax upon the other public utility gross income.

Public utilities taxed under section 239-5(b), HRS, shall report such public utility gross income on Form U-6, page 1, item 1(a), and then use page 2, Part II, to compute the tax due. All other items and schedules may be disregarded unless other public utility gross income under section 239-5(a), HRS, is involved.

Part III: In the case of a public utility taxed under section 239-5(c), HRS, (relating to sales of products or services to another public utility which resells such products or services), the rate of tax shall be 1/2%. However, if such

public utility has other public utility gross income, the gross income from the sale of its products or services to another public utility shall be included in determining the rate of tax upon the other public utility gross income.

Public utilities taxed under section 239-5(c), HRS, shall report such public utility gross income on Form U-6, page 1, item 1(b), and then use page 2, Part III, to compute the tax due. All other items and schedules may be disregarded unless other public utility gross income under section 239-5(a), HRS, is involved.

Rate of tax for certain carriers.—Part IV: In the case of a common carrier by water, motor carrier and contract carrier other than a motor carrier, the rate of tax upon the gross income each year shall be 4%.

Common carriers by water, motor carriers and contract carriers shall report the gross income from such business on Form U-6, page 1, item 6 and then use page 2, Part IV to compute the tax due. All other items and schedules may be disregarded.

Exemption from real property taxes.—As provided in section 239-3, HRS, a public utility taxed under the Public Service Company Tax Law shall be exempt from the Real Property Tax Law. In order to secure the exemption, a public utility shall annually file with the county tax assessor on or before December 31 preceding the tax year, a return of such property setting forth its claim to the exemption on Form P-7. The claim may include real property under lease to the public utility, under which lease the public utility is required to pay the taxes upon such property, and such claim to exemption shall be determined the same as if the public utility were the owner of such property.

Further, section 239-5(c), HRS, (relating to sales of products or services by a public utility to another public utility for resale of such products or services) provides that the public utility's exemption from real property taxes imposed by Chapter 246, HRS, shall be reduced by the proportion that its public utility gross income bears to its total public utility gross income.

Tax credit for lifeline telephone service subsidy.—Section 239-6.5, HRS, provides that a telephone public utility subject to this chapter that has been authorized to establish a lifeline telephone service rate by the public utilities commission shall be allowed a tax credit equal to the lifeline telephone service costs incurred by the utility company, such credit shall be applied against the telephone utilities tax imposed by Chapter 239, HRS.

The amount of the credit shall be determined and certified annually by the public utilities commission.